



Reprinted
January 25, 2008

SENATE BILL No. 199

DIGEST OF SB 199 (Updated January 24, 2008 3:59 pm - DI 52)

Citations Affected: IC 13-30; IC 34-24; noncode.

Synopsis: Environmental crimes. Repeals environmental crimes statutes, and substitutes a statute that: (1) designates environmental violations as crimes; (2) establishes more severe penalties if the violation results in substantial harm to the environment or loss of human life; (3) establishes factors to be considered in sentencing; (4) establishes maximum and minimum fines; and (5) provides that the crimes are not subject to imprisonment. Extends the environmental crimes task force for one year.

Effective: Upon passage; July 1, 2008.

Gard, Bray

January 8, 2008, read first time and referred to Committee on Energy and Environmental Affairs.

January 16, 2008, amended, reported favorably — Do Pass.

January 24, 2008, read second time, amended, ordered engrossed.

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SB 199—LS 6801/DI 52+



Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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SENATE BILL No. 199

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 13-30-8-1, AS AMENDED BY P.L.137-2007,
2 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2008]: Sec. 1. A vehicle that is used to transport hazardous
4 waste in the commission of an offense described in ~~IC 13-30-10-4~~
5 **IC 13-30-10-1.5** is subject to forfeiture under IC 34-24-1.
6 SECTION 2. IC 13-30-10-1.5 IS ADDED TO THE INDIANA
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2008]: **Sec. 1.5. (a) Except as provided in**
9 **subsection (b), a person regulated under IC 13-22 who knowingly**
10 **does any of the following commits a Class B misdemeanor:**
11 (1) **Transports hazardous waste to an unpermitted facility.**
12 (2) **Treats, stores, or disposes of hazardous waste without a**
13 **permit issued by the department.**
14 (3) **Transports, treats, stores, disposes, recycles, or causes to**
15 **be transported used oil regulated under 329 IAC 13 in**
16 **violation of the standards established by the department for**
17 **the management of used oil.**



(4) Makes a false material statement or representation in any label, manifest, record, report, or other document filed or maintained under the hazardous waste or used oil standards.

(b) An offense under subsection (a) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (a) is a Class C felony if the offense results in the death of another person.

(c) Before imposing sentence upon conviction of an offense under subsection (a) or (b), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(d) Notwithstanding IC 35-50-3-3:

(1) the court shall order a person convicted under subsection (a) to pay a fine of at least five thousand dollars (\$5,000) per day for each violation and not more than twenty-five thousand dollars (\$25,000) per day for each violation; and

(2) the person is not subject to imprisonment for the crime.

(e) Notwithstanding IC 35-50-2-6(a) or IC 35-50-2-7(a):

(1) the court shall order a person convicted under subsection (b) to pay:

(A) a fine of at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or

(B) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars (\$5,000) and not more

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than one hundred thousand dollars (\$100,000) for each day of violation; and

(2) the person is not subject to imprisonment for the crime.

(f) Except as provided in subsection (g), a person regulated under IC 13-17 who does any of the following commits a Class C misdemeanor:

(1) Knowingly violates any applicable requirements of IC 13-17-4, IC 13-17-5, IC 13-17-6, IC 13-17-7, IC 13-17-8, IC 13-17-9, IC 13-17-10, IC 13-17-13, or IC 13-17-14.

(2) Knowingly violates any air pollution registration, construction, or operating permit condition issued by the department.

(3) Knowingly violates any fee or filing requirement in IC 13-17.

(4) Knowingly makes any false material statement, representation, or certification in any form, notice, or report required by an air pollution registration, construction, or operating permit issued by the department.

(g) An offense under subsection (f) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (f) is a Class C felony if the offense results in the death of another person.

(h) Before imposing sentence upon conviction of an offense under subsection (f) or (g), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

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(i) Notwithstanding IC 35-50-3-4:

- (1) the court shall order a person convicted under subsection (f) to pay a fine of at least five thousand dollars (\$5,000) per day for each violation and not more than twenty-five thousand dollars (\$25,000) per day for each violation; and**
(2) the person is not subject to imprisonment for the crime.

(j) Notwithstanding IC 35-50-2-6(a) or IC 35-50-2-7(a):

- (1) the court shall order a person convicted under subsection (g) to pay:**

(A) a fine of at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or

(B) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars (\$5,000) and not more than one hundred thousand dollars (\$100,000) for each day of violation; and

- (2) the person is not subject to imprisonment for the crime.**

(k) Except as provided in subsection (l), a person regulated under IC 13-18 who does any of the following commits a Class C misdemeanor:

(1) Willfully or recklessly violates any applicable standards or limitations of IC 13-18-3-2.4, IC 13-18-4-5, IC 13-18-8, IC 13-18-9, IC 13-18-10, IC 13-18-12, IC 13-18-14, IC 13-18-15, or IC 13-18-16.

(2) Willfully or recklessly violates any National Pollutant Discharge Elimination System permit condition issue by the department under IC 13-18-19.

(3) Willfully or recklessly violates any National Pollutant Discharge Elimination System Permit filing requirement.

(4) Knowingly makes any false material statement, representation, or certification in any National Pollutant Discharge Elimination System Permit form or in any notice or report required by a National Pollutant Discharge Elimination System permit issued by the Department.

(l) An offense under subsection (k) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (k) is a Class C felony if the offense results in the death of another person.

(m) Before imposing sentence upon conviction of an offense under subsection (k) or (l), the court shall consider either or both

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of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(3) Whether the discharge was the result of a combined sewer overflow and the person regulated had given notice of that fact to the department.

(n) Notwithstanding IC 35-50-3-4:

(1) the court shall order a person convicted under subsection (k)(1), (k)(2), or (k)(3) to pay a fine of at least five thousand dollars (\$5,000) a day for each violation and not more than twenty-five thousand dollars (\$25,000) a day for each violation; and

(2) the person is not subject to imprisonment for the crime.

(o) Notwithstanding IC 35-50-3-4:

(1) the court shall order a person convicted under subsection (k)(4) to pay a fine of at least five thousand dollars (\$5,000) for each instance of violation and not more than ten thousand dollars (\$10,000) for each instance of violation; and

(2) the person is not subject to imprisonment for the crime.

(p) Notwithstanding IC 35-50-2-6(a) or IC 35-50-2-7(a):

(1) the court shall order a person convicted under subsection (l) to pay:

(A) a fine of at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or

(B) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars (\$5,000) and not more

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than one hundred thousand dollars (\$100,000) for each day of violation; and

(2) the person is not subject to imprisonment for the crime.

SECTION 3. IC 34-24-1-1, AS AMENDED BY P.L.137-2007, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(ii) Dealing in methamphetamine (IC 35-48-4-1.1).

(iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iv) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(v) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(vi) Dealing in a counterfeit substance (IC 35-48-4-5).

(vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(viii) Possession of methamphetamine (IC 35-48-4-6.1).

(ix) Dealing in paraphernalia (IC 35-48-4-8.5).

(x) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of ~~IC 13-30-10-4.~~ **IC 13-30-10-1.5.**

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of

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terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

- (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;
- (B) used to facilitate any violation of a criminal statute; or
- (C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

- (A) commit, attempt to commit, or conspire to commit;
- (B) facilitate the commission of; or
- (C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

- (A) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
- (B) Dealing in methamphetamine (IC 35-48-4-1.1).
- (C) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (D) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (E) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

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(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly as a result of the offense.

(15) Except as provided in subsection (e), a motor vehicle used by a person who operates the motor vehicle:

(A) while intoxicated, in violation of IC 9-30-5-1 through IC 9-30-5-5, if in the previous five (5) years the person has two

(2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction; or

(B) on a highway while the person's driver's license is suspended in violation of IC 9-24-19-2 through IC 9-24-19-4, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

(i) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or

(ii) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction.

If a court orders the seizure of a motor vehicle under this subdivision, the court shall transmit an order to the bureau of motor vehicles recommending that the bureau not permit a motor vehicle to be registered in the name of the person whose motor vehicle was seized until the person possesses a current driving license (as defined in IC 9-13-2-41).

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a

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preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

- (1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a narcotic drug).
- (2) IC 35-48-4-1.1 (dealing in methamphetamine).
- (3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).
- (4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
- (5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.
- (6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Class A felony, Class B felony, or Class C felony.
- (7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class A felony, Class B felony, or Class C felony.
- (8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

(e) A motor vehicle operated by a person who is not:

- (1) an owner of the motor vehicle; or
- (2) the spouse of the person who owns the motor vehicle;

is not subject to seizure under subsection (a)(15) unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a)(15).

SECTION 4. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2008]: IC 13-30-10-2; IC 13-30-10-3; IC 13-30-10-4.

SECTION 5. [EFFECTIVE UPON PASSAGE] (a) **As used in this SECTION, "task force" refers to the environmental crimes task force established by this SECTION.**

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- 1 (b) There is established the environmental crimes task force.
- 2 (c) The task force consists of the members of the environmental
- 3 crimes task force created by P.L.1- 2006, SECTION 590 who
- 4 served on December 31, 2007.
- 5 (d) The appointed members of the task force serve at the
- 6 pleasure of the appointing authority under P.L.1-2006, SECTION
- 7 590. The appointing authority under P.L.1-2006, SECTION 590
- 8 shall fill any vacancy on the task force within forty-five (45) days.
- 9 (e) The chairman of the legislative council shall designate a
- 10 legislative member of the task force to serve as chairperson of the
- 11 task force.
- 12 (f) The expenses of the task force shall be paid from
- 13 appropriations made to the legislative council or the legislative
- 14 services agency.
- 15 (g) The task force shall do the following:
- 16 (1) Conduct at least one (1) public hearing to receive
- 17 comments from the public on the need for further
- 18 amendments to IC 13-30-10.
- 19 (2) If the task force determines that further amendments to
- 20 IC 13-30-10 are appropriate, prepare recommendations for
- 21 amendments to IC 13-30-10 that are consistent with the
- 22 minimum requirements for the department of environmental
- 23 management delegated state programs.
- 24 (3) Submit its final report before November 1, 2008, to:
- 25 (A) the governor;
- 26 (B) the executive director of the legislative services agency
- 27 in an electronic format under IC 5-14-6; and
- 28 (C) the environmental quality service council.
- 29 (h) The legislative services agency shall provide staff support to
- 30 the task force.
- 31 (i) The task force shall operate under the policies governing
- 32 study committees adopted by the legislative council.
- 33 (j) A quorum of the task force must be present to conduct
- 34 business. A quorum consists of a majority of the members of the
- 35 task force. The task force may not take an official action unless the
- 36 official action has been approved by at least a majority of the
- 37 members of the task force.
- 38 (k) This SECTION expires January 1, 2009.
- 39 SECTION 6. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 199, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 6 through 17, begin a new paragraph and insert:

"SECTION 2. IC 13-30-10-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 1.5. (a) Except as provided in subsection (b), a person regulated under IC 13-22 who knowingly does any of the following commits a Class B misdemeanor:**

- (1) Transports hazardous waste to an unpermitted facility.**
- (2) Treats, stores, or disposes of hazardous waste without a permit issued by the department.**
- (3) Transports, treats, stores, disposes, recycles, or causes to be transported used oil regulated under 329 IAC 13 in violation of the standards established by the department for the management of used oil.**
- (4) Makes a false material statement or representation in any label, manifest, record, report, or other document filed or maintained under the hazardous waste or used oil standards.**

(b) An offense under subsection (a) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (a) is a Class C felony if the offense results in the death of another person.

(c) Before imposing sentence upon conviction of an offense under subsection (a) or (b), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

- (1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:**
 - (A) A substantial risk of serious bodily injury.**
 - (B) Serious bodily injury to an individual.**
 - (C) The death of a vertebrate animal.**
 - (D) Damage to the environment that:**
 - (i) renders the environment unfit for human or vertebrate animal life; or**
 - (ii) causes damage to an endangered, an at risk, or a threatened species.**

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(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(d) Notwithstanding IC 35-50-3-3, a person who is convicted of a Class B misdemeanor under subsection (a) may be punished by a fine of at least ten thousand dollars (\$10,000) per day for each violation and not more than twenty-five thousand dollars (\$25,000) per day for each violation.

(e) Notwithstanding IC 35-50-2-6(a) or IC 35-50-2-7(a), the court may order a person convicted under subsection (b) to pay:

- (1) a fine of at least ten thousand dollars (\$10,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or
- (2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of not more than one hundred thousand dollars (\$100,000) for each day of violation.

(f) Except as provided in subsection (g), a person regulated under IC 13-17 who does any of the following commits a Class C misdemeanor:

- (1) Knowingly violates any applicable requirements of IC 13-17-4, IC 13-17-5, IC 13-17-6, IC 13-17-7, IC 13-17-8, IC 13-17-9, IC 13-17-10, IC 13-17-13, or IC 13-17-14.
- (2) Knowingly violates any air pollution registration, construction, or operating permit condition issued by the department.
- (3) Knowingly violates any fee or filing requirement in IC 13-17.
- (4) Knowingly makes any false material statement, representation, or certification in any form, notice, or report required by an air pollution registration, construction, or operating permit issued by the department.

(g) An offense under subsection (f) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (f) is a Class C felony if the offense results in the death of another person.

(h) Before imposing sentence upon conviction of an offense under subsection (f) or (g), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

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(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(i) Notwithstanding IC 35-50-3-4, a person who is convicted of a Class C misdemeanor under subsection (f) may be punished by a fine of at least ten thousand dollars (\$10,000) per day for each violation and not more than twenty-five thousand dollars (\$25,000) per day for each violation.

(j) Notwithstanding IC 35-50-2-6(a) or IC 35-50-2-7(a), the court may order a person convicted under subsection (g) to pay:

(1) a fine of at least ten thousand dollars (\$10,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or

(2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of not more than one hundred thousand dollars (\$100,000) for each day of violation.

(k) Except as provided in subsection (l), a person regulated under IC 13-18 who does any of the following commits a Class C misdemeanor:

(1) Willfully or recklessly violates any applicable standards or limitations of IC 13-18-3-2.4, IC 13-18-4-5, IC 13-18-8, IC 13-18-9, IC 13-18-10, IC 13-18-12, IC 13-18-14, IC 13-18-15, or IC 13-18-16.

(2) Willfully or recklessly violates any National Pollutant Discharge Elimination System permit condition issue by the department under IC 13-18-19.

(3) Willfully or recklessly violates any National Pollutant Discharge Elimination System Permit filing requirement.

(4) Knowingly makes any false material statement,

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representation, or certification in any National Pollutant Discharge Elimination System Permit form or in any notice or report required by a National Pollutant Discharge Elimination System permit issued by the Department.

(l) An offense under subsection (k) is a Class D felony if the offense results in damage to the environment that renders the environment unfit for human or vertebrate animal life. An offense under subsection (k) is a Class C felony if the offense results in the death of another person.

(m) Before imposing sentence upon conviction of an offense under subsection (k) or (l), the court shall consider either or both of the following factors, if found by the jury or if stipulated to by the parties in a plea agreement:

(1) If the offense involves discharge of a contaminant into the environment, whether that discharge resulted in any or a combination of the following:

(A) A substantial risk of serious bodily injury.

(B) Serious bodily injury to an individual.

(C) The death of a vertebrate animal.

(D) Damage to the environment that:

(i) renders the environment unfit for human or vertebrate animal life; or

(ii) causes damage to an endangered, an at risk, or a threatened species.

(2) Whether the person did not know and could not reasonably have been expected to know that the contaminant discharged into the environment was capable of causing a result described in subdivision (1).

(3) Whether the discharge was the result of a combined sewer overflow and the person regulated had given notice of that fact to the department.

(n) Notwithstanding IC 35-50-3-4, a person who is convicted of a Class C misdemeanor under subsection (k)(1), (k)(2), or (k)(3) may be punished by a fine of at least ten thousand dollars (\$10,000) a day for each violation and not more than twenty-five thousand dollars (\$25,000) a day for each violation.

(o) Notwithstanding IC 35-50-3-4, a person who is convicted of a Class C misdemeanor under subsection (k)(4) may be punished by a fine of at least five thousand dollars (\$5,000) for each instance of violation and not more than ten thousand dollars (\$10,000) for each instance of violation.

(p) Notwithstanding IC 35-50-2-6(a) or IC 35-50-2-7(a), the

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court may order a person convicted under subsection (l) to pay:

- (1) a fine of at least ten thousand dollars (\$10,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or
- (2) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of not more than one hundred thousand dollars (\$100,000) for each day of violation."

Delete page 2.

Page 3, delete lines 1 through 4.

Page 6, after line 40, begin a new paragraph and insert:

"SECTION 5. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "task force" refers to the environmental crimes task force established by this SECTION.

(b) There is established the environmental crimes task force.

(c) The task force consists of the members of the environmental crimes task force created by P.L.1- 2006, SECTION 590 who served on December 31, 2007.

(d) The appointed members of the task force serve at the pleasure of the appointing authority under P.L.1-2006, SECTION 590. The appointing authority under P.L.1-2006, SECTION 590 shall fill any vacancy on the task force within forty-five (45) days.

(e) The chairman of the legislative council shall designate a legislative member of the task force to serve as chairperson of the task force.

(f) The expenses of the task force shall be paid from appropriations made to the legislative council or the legislative services agency.

(g) The task force shall do the following:

- (1) Conduct at least one (1) public hearing to receive comments from the public on the need for further amendments to IC 13-30-10.
- (2) If the task force determines that further amendments to IC 13-30-10 are appropriate, prepare recommendations for amendments to IC 13-30-10 that are consistent with the minimum requirements for the department of environmental management delegated state programs.
- (3) Submit its final report before November 1, 2008, to:
 - (A) the governor;
 - (B) the executive director of the legislative services agency in an electronic format under IC 5-14-6; and
 - (C) the environmental quality service council.

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(h) The legislative services agency shall provide staff support to the task force.

(i) The task force shall operate under the policies governing study committees adopted by the legislative council.

(j) A quorum of the task force must be present to conduct business. A quorum consists of a majority of the members of the task force. The task force may not take an official action unless the official action has been approved by at least a majority of the members of the task force.

(k) This SECTION expires January 1, 2009.

SECTION 6. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 199 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 5, Nays 1.

SENATE MOTION

Madam President: I move that Senate Bill 199 be amended to read as follows:

Page 2, delete lines 28 through 41, begin a new paragraph and insert:"

(d) Notwithstanding IC 35-50-3-3:

(1) the court shall order a person convicted under subsection (a) to pay a fine of at least five thousand dollars (\$5,000) per day for each violation and not more than twenty-five thousand dollars (\$25,000) per day for each violation; and

(2) the person is not subject to imprisonment for the crime.

(e) Notwithstanding IC 35-50-2-6(a) or IC 35-50-2-7(a):

(1) the court shall order a person convicted under subsection (b) to pay:

(A) a fine of at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or

(B) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars (\$5,000) and not more than one hundred thousand dollars (\$100,000) for each day

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of violation; and

(2) the person is not subject to imprisonment for the crime."

Page 3, delete lines 39 through 42, begin a new paragraph and insert:

(i) Notwithstanding IC 35-50-3-4:

(1) the court shall order a person convicted under subsection (f) to pay a fine of at least five thousand dollars (\$5,000) per day for each violation and not more than twenty-five thousand dollars (\$25,000) per day for each violation; and

(2) the person is not subject to imprisonment for the crime.

(j) Notwithstanding IC 35-50-2-6(a) or IC 35-50-2-7(a):

(1) the court shall order a person convicted under subsection (g) to pay:

(A) a fine of at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000) for each day of violation; or

(B) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars (\$5,000) and not more than one hundred thousand dollars (\$100,000) for each day of violation; and

(2) the person is not subject to imprisonment for the crime."

Page 4, delete lines 1 through 10.

Page 5, delete lines 13 through 31, begin a new paragraph and insert:

"(n) Notwithstanding IC 35-50-3-4:

(1) the court shall order a person convicted under subsection (k)(1), (k)(2), or (k)(3) to pay a fine of at least five thousand dollars (\$5,000) a day for each violation and not more than twenty-five thousand dollars (\$25,000) a day for each violation; and

(2) the person is not subject to imprisonment for the crime.

(o) Notwithstanding IC 35-50-3-4:

(1) the court shall order a person convicted under subsection (k)(4) to pay a fine of at least five thousand dollars (\$5,000) for each instance of violation and not more than ten thousand dollars (\$10,000) for each instance of violation; and

(2) the person is not subject to imprisonment for the crime.

(p) Notwithstanding IC 35-50-2-6(a) or IC 35-50-2-7(a):

(1) the court shall order a person convicted under subsection (l) to pay:

(A) a fine of at least five thousand dollars (\$5,000) and not

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more than fifty thousand dollars (\$50,000) for each day of violation; or

(B) if the person has a prior unrelated conviction for an offense under this title that may be punished as a felony, a fine of at least five thousand dollars (\$5,000) and not more than one hundred thousand dollars (\$100,000) for each day of violation; and

(2) the person is not subject to imprisonment for the crime."

(Reference is to SB 199 as printed January 17, 2008.)

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